

AMENDED IN SENATE AUGUST 22, 2014

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1233

Introduced by Senator Wyland

February 20, 2014

An act to amend Section ~~368~~ 801.6 of the Penal Code, ~~relating to crimes,~~ and to amend Section 15657.7 of the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1233, as amended, Wyland. ~~Theft: elder and dependent adults.~~
Elder and dependent adult abuse: statutes of limitation.

(1) Existing law allows prosecution for specified offenses involving abuse of an elder or dependent adult, except for violations of a law proscribing theft or embezzlement, to be filed at any time within 5 years from the date of the occurrence of the offense.

This bill would increase this statute of limitations from 5 years to 15 years from the date of the occurrence of the offense.

(2) Existing law requires that specified actions for damages for financial abuse of an elder or dependent adult, as defined, be commenced within 4 years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse.

This bill would increase this statute of limitations from 4 years to 15 years after the plaintiff discovers, or through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse.

~~Existing law makes it a crime, punishable either as a misdemeanor or a felony, for a caretaker of an elder or dependent adult, or for a person~~

who is not a caretaker who knows or reasonably should know that the victim is an elder or dependent adult, to violate any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950. If punished as a misdemeanor, existing law authorizes imprisonment or a fine not to exceed \$2,500, or both the fine and imprisonment. If punished as a felony, existing law authorizes imprisonment or a fine not to exceed \$10,000, or both the fine and imprisonment.

This bill would make the maximum amount of the fine for this crime \$25,000, if punished as a misdemeanor, and \$250,000, if punished as a felony.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 801.6 of the Penal Code is amended to
2 read:

3 801.6. Notwithstanding any other limitation of time described
4 in this chapter, prosecution for any offense proscribed by Section
5 368, except for a violation of any ~~provision of law~~ proscribing
6 theft or embezzlement, may be filed at any time within ~~five~~ 15
7 years from the date of occurrence of ~~such~~ the offense.

8 SEC. 2. Section 15657.7 of the Welfare and Institutions Code
9 is amended to read:

10 15657.7. An action for damages pursuant to Sections 15657.5
11 and 15657.6 for financial abuse of an elder or dependent adult, as
12 defined in Section 15610.30, shall be commenced within ~~four~~ 15
13 years after the plaintiff discovers or, through the exercise of
14 reasonable diligence, should have discovered, the facts constituting
15 the financial abuse.

16 SECTION 1. ~~Section 368 of the Penal Code is amended to~~
17 read:

18 368. (a) ~~The Legislature finds and declares that crimes against~~
19 ~~elders and dependent adults are deserving of special consideration~~
20 ~~and protection, not unlike the special protections provided for~~
21 ~~minor children, because elders and dependent adults may be~~
22 ~~confused, on various medications, mentally or physically impaired,~~
23 ~~or incompetent, and therefore less able to protect themselves, to~~

1 understand or report criminal conduct, or to testify in court
2 proceedings on their own behalf.

3 (b) (1) A person who knows or reasonably should know that a
4 person is an elder or dependent adult and who, under circumstances
5 or conditions likely to produce great bodily harm or death, willfully
6 causes or permits an elder or dependent adult to suffer, or inflicts
7 thereon unjustifiable physical pain or mental suffering, or having
8 the care or custody of an elder or dependent adult, willfully causes
9 or permits the person or health of the elder or dependent adult to
10 be injured, or willfully causes or permits the elder or dependent
11 adult to be placed in a situation in which his or her person or health
12 is endangered, is punishable by imprisonment in a county jail not
13 exceeding one year, or by a fine not to exceed six thousand dollars
14 (\$6,000), or by both that fine and imprisonment, or by
15 imprisonment in the state prison for two, three, or four years.

16 (2) If, in the commission of an offense described in paragraph
17 (1), the victim suffers great bodily injury, as defined in Section
18 12022.7, the defendant shall receive an additional term in the state
19 prison as follows:

20 (A) Three years if the victim is under 70 years of age.

21 (B) Five years if the victim is 70 years of age or older.

22 (3) If, in the commission of an offense described in paragraph
23 (1), the defendant proximately causes the death of the victim, the
24 defendant shall receive an additional term in the state prison as
25 follows:

26 (A) Five years if the victim is under 70 years of age.

27 (B) Seven years if the victim is 70 years of age or older.

28 (c) A person who knows or reasonably should know that a
29 person is an elder or dependent adult and who, under circumstances
30 or conditions other than those likely to produce great bodily harm
31 or death, willfully causes or permits any elder or dependent adult
32 to suffer, or inflicts thereon unjustifiable physical pain or mental
33 suffering, or having the care or custody of an elder or dependent
34 adult, willfully causes or permits the person or health of the elder
35 or dependent adult to be injured or willfully causes or permits the
36 elder or dependent adult to be placed in a situation in which his or
37 her person or health may be endangered, is guilty of a
38 misdemeanor. A second or subsequent violation of this subdivision
39 is punishable by a fine not to exceed two thousand dollars (\$2,000);

1 or by imprisonment in a county jail not to exceed one year, or by
2 both that fine and imprisonment.

3 (d) A person who is not a caretaker who violates any provision
4 of law proscribing theft, embezzlement, forgery, or fraud, or who
5 violates Section 530.5 proscribing identity theft, with respect to
6 the property or personal identifying information of an elder or a
7 dependent adult, and who knows or reasonably should know that
8 the victim is an elder or a dependent adult, is punishable as follows:

9 (1) ~~By a fine not exceeding twenty-five thousand dollars~~
10 ~~(\$25,000), or by imprisonment in a county jail not exceeding one~~
11 ~~year, or by both that fine and imprisonment, or by a fine not~~
12 ~~exceeding two hundred fifty thousand dollars (\$250,000), or by~~
13 ~~imprisonment pursuant to subdivision (h) of Section 1170 for two,~~
14 ~~three, or four years, or by both that fine and imprisonment, when~~
15 ~~the moneys, labor, goods, services, or real or personal property~~
16 ~~taken or obtained is of a value exceeding nine hundred fifty dollars~~
17 ~~(\$950).~~

18 (2) ~~By a fine not exceeding one thousand dollars (\$1,000), by~~
19 ~~imprisonment in a county jail not exceeding one year, or by both~~
20 ~~that fine and imprisonment, when the moneys, labor, goods,~~
21 ~~services, or real or personal property taken or obtained is of a value~~
22 ~~not exceeding nine hundred fifty dollars (\$950).~~

23 (e) A caretaker of an elder or a dependent adult who violates
24 any provision of law proscribing theft, embezzlement, forgery, or
25 fraud, or who violates Section 530.5 proscribing identity theft,
26 with respect to the property or personal identifying information of
27 that elder or dependent adult, is punishable as follows:

28 (1) ~~By a fine not exceeding twenty-five thousand dollars~~
29 ~~(\$25,000), or by imprisonment in a county jail not exceeding one~~
30 ~~year, or by both that fine and imprisonment, or by a fine not~~
31 ~~exceeding two hundred fifty thousand dollars (\$250,000), or by~~
32 ~~imprisonment pursuant to subdivision (h) of Section 1170 for two,~~
33 ~~three, or four years, or by both that fine and imprisonment, when~~
34 ~~the moneys, labor, goods, services, or real or personal property~~
35 ~~taken or obtained is of a value exceeding nine hundred fifty dollars~~
36 ~~(\$950).~~

37 (2) ~~By a fine not exceeding one thousand dollars (\$1,000), by~~
38 ~~imprisonment in a county jail not exceeding one year, or by both~~
39 ~~that fine and imprisonment, when the moneys, labor, goods,~~

1 services, or real or personal property taken or obtained is of a value
2 not exceeding nine hundred fifty dollars (\$950).

3 (f) ~~A person who commits the false imprisonment of an elder~~
4 ~~or a dependent adult by the use of violence, menace, fraud, or~~
5 ~~deceit is punishable by imprisonment pursuant to subdivision (h)~~
6 ~~of Section 1170 for two, three, or four years.~~

7 (g) ~~As used in this section, “elder” means a person who is 65~~
8 ~~years of age or older.~~

9 (h) ~~As used in this section, “dependent adult” means a person~~
10 ~~who is between 18 and 64 years of age, inclusive, who has physical~~
11 ~~or mental limitations that restrict his or her ability to carry out~~
12 ~~normal activities or to protect his or her rights, including, but not~~
13 ~~limited to, persons who have physical or developmental disabilities~~
14 ~~or whose physical or mental abilities have diminished because of~~
15 ~~age. “Dependent adult” includes a person between 18 and 64 years~~
16 ~~of age, inclusive, who is admitted as an inpatient to a 24-hour~~
17 ~~health facility, as defined in Sections 1250, 1250.2, and 1250.3 of~~
18 ~~the Health and Safety Code.~~

19 (i) ~~As used in this section, “caretaker” means a person who has~~
20 ~~the care, custody, or control of, or who stands in a position of trust~~
21 ~~with, an elder or a dependent adult.~~

22 (j) ~~Nothing in this section shall preclude prosecution under both~~
23 ~~this section and Section 187 or 12022.7 or any other law. However,~~
24 ~~a person shall not receive an additional term of imprisonment under~~
25 ~~both paragraphs (2) and (3) of subdivision (b) for a single offense,~~
26 ~~nor shall a person receive an additional term of imprisonment~~
27 ~~under both Section 12022.7 and paragraph (2) or (3) of subdivision~~
28 ~~(b) for a single offense.~~

29 (k) ~~In any case in which a person is convicted of violating these~~
30 ~~provisions, the court may require him or her to receive appropriate~~
31 ~~counseling as a condition of probation. A defendant ordered to be~~
32 ~~placed in a counseling program shall be responsible for paying the~~
33 ~~expense of his or her participation in the counseling program as~~
34 ~~determined by the court. The court shall take into consideration~~
35 ~~the ability of the defendant to pay, and no defendant shall be denied~~
36 ~~probation because of his or her inability to pay.~~